



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD ASSOCIATION OF TECHNICAL SERVICE	:	
EMPLOYEES/NEA-NEW HAMPSHIRE	:	
	:	
Complainant	:	CASE NO. M-0601:1
	:	
v.	:	DECISION NO. 89-74
	:	
NEA-NEW HAMPSHIRE	:	
	:	
Respondent	:	

#### Representing Concord Association of Technical Service Employees:

Dennis Miniutti, Representative C.A.T.S.E.

#### Representing NEA-New Hampshire:

James Allmendinger, Esq., Counsel

#### Also appearing:

Randy Wilkins, Concord School District  
 K. LaForge, Concord School District  
 Theodore G. Wells, Jr., NEA-NH  
 Neal A. Murphy, NEA-NH  
 Wally Cumings, NEA-NH

#### BACKGROUND

On May 15, 1989 the Concord Association of Technical Service Employees (CATSE) S.A.U. #8, signed by Dennis Miniutti, filed improper practice charge against NEA-NH alleging failure to negotiate with the Concord School Board in time for the new fiscal year July 1.

By answer to the above complaint NEA-NH states as following; (1) CATSE was certified as a bargaining unit affiliated with NEA-NH on December 8, 1989; (2) since December 8 NEA-NH has dealt with CATSE and its members; (3) the plaintiff failed to identify any specific section of 273-A violated; (4) that no section of 273-A states a cause of action for a failure to bargain because neither CATSE nor the School District has demanded that NEA-NH bargain and because only CATSE has the legal right to bargain as the certified representative; (5) at no time did NEA-NH interfere with the rights of members of CATSE or other members of the bargaining unit; NEA-NH made it clear to CATSE and its members that NEA-NH's promise to assist and support CATSE was contingent upon there being a sufficient number of dues paying members to make bargaining meaningful and that CATSE has not disputed this; (6) that the ultimate responsibility for collective bargaining on behalf of CATSE is CATSE itself; and, (7) finally that Dennis Miniutti has no standing to file ULP on behalf of CATSE because he is neither an officer or member of CATSE and his statement that he represents CATSE is misleading, incorrect and fraudulent.

Hearing in this matter was held on June 27, 1989 at the PELRB office in Concord, New Hampshire.

Atty. Allmendinger for NEA admitted that NEA was not bargaining for CATSE, that NEA-NH was only a parent organization and had done nothing to bar the local organization from negotiating, and that CATSE had certain responsibilities to NEA-NH. At this point of the hearing Atty. Allmendinger moved that member Anderson recuse himself from sitting on the case as AFSCME had previously been the certified bargaining unit for CATSE. PELRB denied the motion.

Dennis Miniutti testified that the election was held on December 8 on application of CATSE with NEA-NH and that NEA representatives when contacted stated, "if we don't get enough members we will drop you." He further testified on his attendance at meetings and his many attempts to call Mr. Wells (NEA-NH Rep.) around 1st of May to which he received no response.

Counsel for NEA stated that the petition should be dismissed as improper and it should have been a decertification petition instead of an unfair labor practice charge.

Witness Waldo Cumings (UniServ Director, Capitol Region) professional advocate, testified as to NEA-NH and his support and history of the unit formation and practices within the unit.

Theodore G. Wells, Jr., witness testified as to his relationship with CATSE since early December, his efforts to increase membership and lack of success, meetings with Perry White (Pres. of CATSE) and his advise to him on start of negotiations for CATSE and his meeting with members on ways to proceed with negotiations.

The Executive Director of NEA-NH in correspondence to William Wright, President of CATSE, indicated that 15 members out of a unit of 48 potential members did not meet the initial test of sufficient members to provide adequate service and representation and suggested that "NEA-NH will no longer consider CATSE affiliated with NEA-NH."

In closing statements Atty. Allmendinger for the Association (NEA-NH) alleged Miniutti had no standing as a member of CATSE or as an officer of CATSE and his feeling that this was a matter for decertification, not fair representation, that there had been no evidence of union refusing to bargain with employer, that it was an internal union matter and that Miniutti had not paid dues to CATSE or NEA-NH.

#### FINDINGS OF FACT

After considering all exhibits and oral testimony PELRB make the following findings of fact which are intended as response to the parties requests for findings:

1. On June 7, 1988, Concord Association of Technical Service Employees NEA-NH petitioned for certification of CATSE bargaining unit; exception to composition of the unit was taken by Concord School District. Resolution of the issues of units composition was resolved by PELRB at hearing September 13, 1988.

2. As a result of the election conducted, members of the bargaining unit voted to select CATSE/NEA-NH as exclusive representative of the bargaining unit and was so certified on December 8, 1988.
3. Dennis Miniutti was at that time and is now a member of the bargaining unit.
4. NEA-NH must be and is considered a party to represent the bargaining unit whether such bargaining unit members are dues paying or not. RSA 273-A makes no reference and properly so of any requirements with respect to dues obligations.
5. Any member of a duly certified bargaining unit has standing before PELRB.
6. The only evidence of NEA-NH attempt to conduct negotiations with the employees is Association Exhibit #7 letter dated September 19, 1988 to Michael Dunn, (prior to unit determination, decision and election) Chairman Concord School Board, stating that CATSE/NEA-NH wished to bargain a master contract for 1989-90 school year and requesting a date to begin negotiations, signed by W.B. Cumings Region Director. There was no evidence of follow up after the unit was certified.
7. There appeared to be some interaction between NEA-NH representatives and CATSE members regarding membership and withdrawal of affiliation. This issue remained unresolved.
8. While the Association alleged Miniutti had evidenced hostility toward unions, no specified facts to substantiate such hostility was presented other than his participation in filing decertification petition concerning a predecessor organization.
9. To deny representation of a bargaining unit member on the basis of not paying dues to the organization is a violation of its obligation secured by the election process in becoming the sole and exclusive representative of the bargaining unit.
10. RSA 273-A is totally silent on membership dues obligation when conferring the exclusive representative mantle on the bargaining unit.
11. PELRB denies NEA-NH's motion to dismiss.
12. PELRB finds NEA-NH has failed to provide fair and proper representation of CATSE the certified bargaining unit in that they failed to pursue negotiations with the Concord School Board based on insufficient number of dues paying members.

DECISION AND ORDER

An organization awarded certification after an election becomes the exclusive representative of that bargaining unit and has the obligation to represent and negotiate for all members of the unit regardless of whether they are dues paying members of the organization or not and finds NEA-NH guilty for failing to fairly represent CATSE and hereby withdraws the certification issued December 8, 1988 of Concord Association of Technical and Support Service Employees/NEA-NH as provided in 273-A:10 VI (B) effective date of this decision.

Signed this 26th day of October, 1989.  
Corrected November 1, 1989.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and James Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.



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Signed this 26th day of October, 1989.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and James Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.